

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

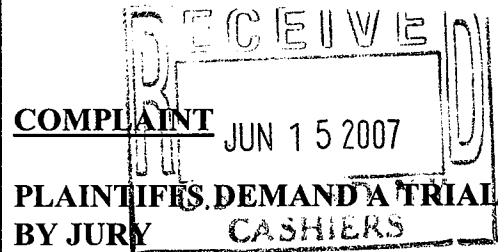
DAVID PRICE and ERNANDO ASHOKA THOMAS,

Plaintiffs,

-against-

MEDIASTREAM VIERTE FILM GMBH & CO.  
VERMARKSTUNGS KG,

Defendant.



Plaintiffs David Price and Ernando Ashoka Thomas (the "Authors"), by their attorneys, Davis & Gilbert LLP, for their Complaint against Mediastream Vierte Film GmbH & Co. Vermarkstungs KG ("MediaStream"), allege as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement arising out of defendant's unauthorized production and/or other exploitation of the Authors' screenplay, *Dodgeball: The Movie* (the "Screenplay" or the "Authors' Screenplay"), in connection with the highly successful motion picture entitled *Dodgeball: A True Underdog Story* (the "Infringing Work").

2. In late March 2001, the Authors gave a copy of the Screenplay to Shaun Redick, who was then an agent-in-training employed by the William Morris Agency ("WMA"). Upon information and belief, Mr. Redick provided a copy of the Screenplay to Greg McKnight, then a WMA literary agent, who, in turn, passed the Screenplay on to defendant Rawson Thurber. Thurber copied substantial portions of the Screenplay when he wrote a screenplay called *Underdogs* (the "Thurber Screenplay"), which was later revised and became the screenplay for the Infringing Work.

3. In 2003 and 2004, the Infringing Work was produced by Twentieth Century Fox Film Corporation (“Fox”), Red Hour Films, and defendant Mediastream.

4. Fox is a multi-faceted entertainment company with operations in several business areas, including producing, manufacturing, distributing, selling and otherwise commercially exploiting feature films.

5. Upon information and belief, Mediastream is a German investment company. Upon information and belief, Mediastream produced and/or otherwise exploited the Infringing Work.

6. The Infringing Work is so similar to the Screenplay that Mr. Thurber – who was 26 when he wrote the Thurber Screenplay – must have had access to and copied the Authors’ Screenplay. The following similarities, combined with dozens of others, rule out the possibility that Mr. Thurber independently created the Thurber Screenplay:

- In both works, a bunch of average guys who need to raise money quickly to save a company from going out of business decide to do so in an unprecedented way: by putting together a ragtag team of losers and winning the national championships in dodgeball, a sport that had never before been the subject of a feature film.
- In both works, the team’s prospects for success improve dramatically after the lead average guy meets a coach with several specific and highly unusual characteristics. The coach: (1) is in a wheelchair; (2) is a former dodgeball champion; (3) approaches the average guy unsolicited; and (4) is a sadist, who enjoys watching the team suffer through a dangerous and intentionally unrealistic training routine.
- In both works, the audience is provided with the same historically inaccurate description of dodgeball’s past: that it has been played for generations in China.
- In both works, the coach’s training routine pays off, but then something very strange happens: the coach dies in a bizarre accident.
- In both works, the average guy needs inspiration to finally succeed in the dodgeball tournament, and something extraordinary happens: the ghost of the coach appears and gives him advice.

- In both works, the average guy's team emerges victorious following a mystical event: the average guy defeats his arch-rival by using a maneuver that could only have been executed using supernatural powers.

7. In addition to these distinctive similarities, the Infringing Work and the Screenplay contain dozens of identical events that occur in virtually the same sequence, as well as numerous other similarities regarding characters, plot and tone. That Thurber had access to and copied the Authors' Screenplay is further confirmed by the fact that the Infringing Work at one point was entitled *Dodgeball: The Movie*, the very same title as the Screenplay.

8. Upon information and belief, defendant Mediasstream has infringed the Authors' rights under the Copyright Act by producing and/or otherwise exploiting an unauthorized derivative work based upon the Authors' copyrighted work, *Dodgeball: The Movie*. Plaintiffs seek an award amounting to the percentage of profits that are attributable to copyright infringement. Plaintiffs also seek an order requiring defendant to pay plaintiffs in connection with future profits an amount equal to the percentage of profits that are attributable to infringement.

#### **JURISDICTION AND VENUE**

9. This action arises under the Copyright Act of 1976 (the "Copyright Act"), 17 U.S.C. §§ 101 *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). Venue is proper in this District pursuant to 28 U.S.C. § 1391 (c) and (d).

**THE PARTIES**

10. Plaintiff David Price is a former dodgeball champion who resides in the state of New York.

11. Plaintiff Ernando Ashoka Thomas is a screenwriter.

12. Mr. Price and Mr. Thomas are the owners of the screenplay, *Dodgeball: The Movie*. Mr. Thomas wrote the Screenplay with assistance from Mr. Price.

13. Mr. Price and Mr. Thomas are the owners of all rights, title and interest in and to the Screenplay. The United States Copyright Office has issued Mr. Price and Mr. Thomas a certificate of copyright registration with respect to the Screenplay.

14. Upon information and belief, defendant Mediastream is a German limited liability company with an office at Tolzer Strasse 5, D-82031, Grunwald in the Federal Republic of Germany. Upon information and belief, Mediastream infringed plaintiffs' copyright in the Screenplay by producing and/or otherwise exploiting the Infringing Work.

**FACTUAL ALLEGATIONS**

**Background and Allegations Concerning Access**

15. Mr. Price was a competitive dodgeball player. Mr. Price's dodgeball team – the Bexley Reckers – several times won the dodgeball national championship. Mr. Price's team was so successful in competitive dodgeball that the National Amateur Dodgeball Association now awards the “Bexley Cup” to any team that wins both the indoor and outdoor dodgeball championships in the same year. Drawing upon his experiences as a competitive dodgeball player, Mr. Price conceived of the idea of writing a screenplay about competitive dodgeball.

16. Mr. Thomas is an aspiring screenwriter. In early 2001, Mr. Price and Mr. Thomas collaborated in the writing of the Screenplay.

17. On March 20, 2001, Mr. Thomas held a screening of a film called *Raw Fish* (unrelated to dodgeball), which he had written and directed. A WMA agent-in-training, Shaun Redick, attended the screening and expressed interest in *Raw Fish*. Shortly thereafter, in late March, a copy of the script of the Screenplay and a video of *Raw Fish* were provided to Mr. Redick at WMA. Upon information and belief, Mr. Redick provided copies of the Screenplay and the *Raw Fish* video to Greg McKnight, a WMA literary agent who had graduated from the Peter Stark Producing Program at USC (the “Stark Program”).

18. Upon information and belief, Mr. McKnight gave a copy of the Screenplay to Mr. Thurber, who also attended the Stark Program and had been employed by WMA, where he worked for, among others, Mr. Redick and Mr. McKnight. Mr. McKnight was one of the first agents to whom Mr. Thurber submitted the Thurber Screenplay and is Mr. Thurber’s agent today.

19. Mr. Thurber copied substantial portions of the Authors’ Screenplay when he wrote the Thurber Screenplay.

#### **Similarities Between The Authors’ Screenplay And The Infringing Work**

20. There are an enormous number of similarities between the Authors’ Screenplay and the Infringing Work, including similarities regarding characters, plot, tone, themes and sequence of events. Collectively, these similarities establish that there is substantial similarity between the Infringing Work and protectible portions of the Authors’ Screenplay. Some of the similarities between the two works are set forth below in paragraphs 21 to 126.

21. The events described, the issues presented and the problems resolved in the following section-by-section analysis of the Authors’ Screenplay and the Infringing Work are listed roughly, but not precisely, in the order in which they take place in the two works. All of the events described below, along with the issues and themes presented and resolved, occur in

both works, except where specifically stated otherwise. Because the characters have different names in the two works, they are identified by their most prominent characteristics (such as the “Main Character” or the “Out-of-Shape Loser”).

**Act I (The Introductory Section)**

22. In both works, the events described in paragraphs 23 to 51 occur in Act I (except where specifically stated otherwise), the introductory section of the works that extends from the beginning to the point just before the dodgeball games begin.

23. Both works begin with a sequence of events (the “Opening Sequence”) designed to establish that this fictional world is starkly divided into two groups: above-average people and average people, and the former prey upon the latter. The sharp distinction between the two groups is shown clearly, bluntly and unmistakably.

24. In both works, the audience (for ease of reference, the audience will hereinafter be referred to as “we”) is introduced during the Opening Sequence to the protagonist, who is very clearly an average guy (the “Main Character”). He is a regular, likeable guy who, as the works progress, is shown to have some talent, some charm, some leadership skills and some self-doubt. As the works progress, we see that the Main Character is the leader of a group of average and less-than-average guys, and he is the underdog who we pull for throughout.

25. In both works, we see the Main Character’s home (slightly later in time in the Authors’ Screenplay). It is a beat-up apartment, with a beat-up couch and other signs of neglect.

26. In both works, we meet during the Opening Sequence an evil guy (the “Antagonist”), who is obviously the villain. The Antagonist is a one-dimensional, cartoonish character whose sole (or at least primary) pleasure appears to be demeaning average people. He

seems to be evil for evil's sake. In both works, the Antagonist is the leader of the above-average people.

27. In both works, we learn during the Opening Sequence that the primary conflict in each work will be between the Main Character and the Antagonist as representatives of their respective groups.

28. In both works, immediately after we learn about the sharp conflict between above average and average people, and the conflict between the Main Character and the Antagonist, we are introduced one by one to most of the supporting cast of characters, several of whom will later comprise the Main Character's dodgeball team. Each introduction occurs through a brief scene that pointedly emphasizes the character's primary defining characteristics.

29. In both works, we meet an out-of-shape loser (the "Out-of-Shape Loser"). In the Authors' Screenplay, the Out-Of-Shape Loser's name is *Gordo*, and his status in the world is revealed through his size and both his eating and bathroom habits. In the Infringing Work, his name is *Gordon*, and we see through his size, his work-out routine and his knowledge of obscure sports that he is, in fact, a loser. The Out-of-Shape Loser later joins the dodgeball team in both works.

30. In both works, we meet a romantic loser (the "Romantic Loser"). Through his actions, it is clear that the Romantic Loser has great difficulty developing romantic relationships with women. In the Authors' Screenplay, he is Jimmy, who falls for most every woman he sees, but cannot seem to get anyone interested in him. In the Infringing Work, he is Owen, who has joined a dating service and learned that nobody is interested in him. The Romantic Loser later joins the dodgeball team in both works.

31. In both works, we meet an African-American Guy (the “African-American Guy”). In the Authors’ Screenplay, he is nervous and easily startled. In the Infringing Work, he does not seem to have any particularly distinguishing characteristics, except that he is somewhat excitable and suspicious. The African-American Guy later joins the dodgeball team in both works.

32. In both works, we meet an attractive cheerleader (the “Attractive Cheerleader”). The presence of an attractive-cheerleader character is notable because neither work focuses on characters who are in high school or college.

33. In both works, we meet a lovelorn guy (the “Lovelorn Guy”). He is desperately in love with, and desperately trying to prove himself to, the Attractive Cheerleader. In the Authors’ Screenplay, the Main Character is also the Lovelorn Guy. In the Infringing Work, however, Mr. Thurber split these two attributes of the Main Character into two separate characters. The Lovelorn Guy later joins the dodgeball team in both works.

34. In both works, we meet a mean guy (the “Mean Guy”). The Attractive Cheerleader is generally found at the Mean Guy’s side. The Mean Guy is mean to the Lovelorn Guy simply because, it seems, that is what mean guys do. In the Authors’ Screenplay, the Antagonist and the Mean Guy are the same character. In the Infringing Work, Mr. Thurber split them into two separate characters.

35. In both works, the final member of the cast of average and less-than-average characters that we meet is a bizarre outcast with violent, aggressive tendencies (the “Bizarre Outcast”). His actions demonstrate that he is even more of an outsider than the remainder of the cast. In the Authors’ Screenplay, he is Charles the Bum. In the Infringing Work, he is Steve the Pirate. The Bizarre Outcast later joins the dodgeball team in both works. In both works, the Bizarre Outcast speaks in an affected British style.



36. In both works, we also meet the sole woman who will eventually join the dodgeball team. In the Authors' Screenplay, she is Wana, who is annoying and overly energetic. In the Authors' Screenplay, there is also a supporting character named Kate who is a lesbian and an excellent dodgeball player. In the Infringing Work, the sole woman who eventually joins the team is Kate, who is also the Main Character's love interest. Notably, the Kate character in the Infringing Work is depicted later in the work as a bisexual who is an excellent dodgeball player.

37. In both works, we also learn during Act I that the Antagonist taunts the Main Character whenever he gets the chance, and that the Antagonist and the Main Character have been rivals for years.

38. In both works, we learn during Act I that the Main Character and the Antagonist, in addition to their other areas of competition, will be rivals for the affection of a very attractive woman.

39. In both works, having met most of the main characters early in Act I, we learn about a critical problem that drives the action for the remainder of the works. In each case, money needs to be raised to save a financially strapped business. In the Authors' Screenplay, the Romantic Loser's mother's bar will be repossessed if she does not raise a substantial sum within a short period of time. In the Infringing Work, the Main Character must raise a substantial sum or the gym he operates – Average Joe's – will be taken over by the Antagonist.

40. In both works, we learn in Act I that the loss of the business would likely cause substantial problems for two supporting characters. The Romantic Loser works for the troubled business, and there is concern about what he will do for a living if he loses his job. In addition, the African-American Guy works for the troubled business, and there is also concern about what he will do for a living if he loses his job.

41. In both works, after we learn about the potential loss of the business, there is a single, non-dodgeball effort to raise money, which sets the stage for a scene in which scantily clad, sexy women are sprayed with water. In the Authors' Screenplay (slightly later on, in Act II), the Average Team raises some money – but not enough – through a strip show, which involves spraying attractive women with water. In the Infringing Work, the Average Team fails to raise money through a car wash because attractive women, who are being sprayed with water, are running a competing car wash across the street.

42. In both works, we learn late in Act I that there is prize money being offered in a dodgeball national championship (the “Tournament”), and it is enough money to save the struggling business from going under.

43. In both works, we learn that dodgeball is a game that has been played for generations in China. In the Authors' Screenplay (in Act II), we are told that a former champion is Chinese and comes from a long line of Chinese dodgeball champions. In the Infringing Work, we are told that dodgeball was invented in the 15<sup>th</sup> century by opium-smoking Chinese men. Significantly, upon information and belief, dodgeball has not been played for generations in China.

44. In both works, we also learn in Act I that, in modern times, dodgeball is a means by which mean bullies prey upon feeble nerds. This public humiliation is actively encouraged by the powers that be. In the Authors' Screenplay, the opening scene shows weaker children being pummeled mercilessly with dodgeballs, while the teacher supports this public beating. In the Infringing Work, there is an instructional film in which the narrator proudly describes the sport as one of degradation as a little nerd falls to the ground after being beamed by a dodgeball.

45. In both works, the plot point that signals the end of Act I and propels the story forward into Act II is the decision by the average folks to put together a ragtag team of underdogs (the “Average Team”) for the purpose of winning the prize money in the Tournament.

46. We learn toward the end of Act I that the Main Character will be the leader of the Average Team. In the Authors’ Screenplay, the Average Team consists of six players: (1) the Main Character/Lovelorn Guy; (2) the Out-Of Shape Loser; (3) the Romantic Loser; (4) the Bizarre Outcast; (5) the African-American Guy; and (6) the female character, Wana. In the Infringing Work, as of the conclusion of Act I, the Average Team consists of the same members, except that the Lovelorn Guy (who is also the Main Character in the Authors’ Screenplay) has been separated into his own distinct character, and Wana has been removed from the story.

47. In both works, the Main Character expresses serious concerns about the Average Team’s ability to succeed in its dodgeball efforts.

48. In both works, we learn that it will be very difficult for the Average Team to win the Tournament because, among other things, the Antagonist will do whatever he can to prevent the Average Team from achieving its goal.

49. In both works, Act I concludes after the following has taken place: (1) the decision has been made to raise money to save the financially troubled business through dodgeball; (2) the ragtag team of underdogs has been assembled; and (3) the Antagonist is shown to be one of the obstacles, if not the primary obstacle, that will stand between the Average Team and its goal.

50. In both works, the key scenes in Act I are set in locations, such as gyms and bars, where average guys are likely to be found. As for the tone, both works are quickly shown to be light comedies with hokey plots that should not be taken seriously.

51. In both works, Act I raises a number of the same questions, issues and themes:

- Will the Average Team learn to play dodgeball well enough to have even a chance in the National Championships? If so, how will they learn to play?
- Will the Average Team raise enough money to stop a late-on-its-payments company from going out of business?
- Will the Main Character triumph over the one-dimensional Antagonist, whose primary goal in life is to prey upon the weak and the average?
- Will the Lovelorn Guy win the heart of the Attractive Cheerleader, or will she remain with the Mean Guy?
- Will the Out-Of-Shape Loser do something to finally demonstrate that he is not really a loser?
- Will the Romantic Loser finally find romance?
- Will the Bizarre Outcast find acceptance among his average cohorts?
- Above all, will a ragtag bunch of less-than-average guys persevere by winning the National Championship in a game that has historically been used as a means to degrade and humiliate them and those like them?

**Act II (Early Dodgeball Efforts)**

52. In both works, the events described in paragraphs 53 to 79 occur during Act II (except where specifically stated otherwise), commencing with the point at which the Average Team begins its dodgeball efforts.

53. In both works, Act II begins with a sequence of events (the “Opening Sequence of Act II”) that shows how the Average Team fares in its initial dodgeball efforts.

54. At the very beginning of the Opening Sequence of Act II, we learn that the Out-Of-Shape Loser has a character flaw separate and apart from his obesity. In the Authors’ Screenplay, the Out-Of-Shape Loser is late for practice because of certain bathroom-related issues. In the Infringing Work, the Out-Of-Shape Loser seems to have difficulty getting angry under circumstances in which he probably should.

55. In both works, we learn later on – during the Tournament – that the Out-Of-Shape Loser will need to overcome this character flaw to help the Average Team succeed.

56. In both works, we learn during the Opening Sequence of Act II that the teams that play dodgeball consist of amusing and unusual assortments of characters. In the Authors' Screenplay, one team consists entirely of flamboyant gay men; another team is comprised of pregnant women. In the Infringing Work, the Average Team plays against a team of girl scouts.

57. Untrained and pathetic, the Average Team gets soundly defeated in both works in the Opening Sequence of Act II. The Main Character is the only player who shows any skills at all. He eliminates one player on the other team before being eliminated himself.

58. In both works, there is a distinct gender/class component to the Average Team's early dodgeball efforts. In the Author's Screenplay, the Average Team loses in succession to teams comprised of gay men, pregnant women, and disabled people. In the Infringing Work, the Average Team loses to a team of girl scouts. In both works, the obvious (and politically incorrect) inference to be drawn from the Average Team's losses is that they are so pathetic they cannot even beat a bunch of little girls, gay men, pregnant women or disabled people. Under these circumstances, how can they possibly hope to win the Tournament?

59. In both works, shortly after the Opening Sequence of Act II, the Average Team is sitting at a restaurant having drinks when the Antagonist and his cohorts enter. The Antagonist taunts the Average Team and makes clear that he expects his team (the "Antagonist's Team") to win the Tournament. The Antagonist's despicable behavior provides the Average Team with added incentive to try to win the Tournament.

60. In both works, the Antagonist taunts the Main Character and his teammates in the restaurant with extremely foolish statements.

61. In both works, shortly after the Opening Sequence of Act II, the Main Character is walking alone outside, when a man in a wheelchair (the “Coach”) approaches unsolicited and starts talking to him. At first, the Main Character is dismissive and attempts to end the conversation.

62. In both works, the Main Character decides to hear the Coach out. It turns out that he is a former dodgeball champion who had watched the Average Team’s sorry dodgeball efforts, and who now wants to coach the Average Team. The Main Character agrees to let him coach the team.

63. In both works, there is a single scene in which the Coach is seen with a child who is an avid dodgeball player (earlier in the Infringing Work). In both works, the young boy’s name is Timmy.

64. During Act II in both works, there is a scene in which the Main Character very briefly mentions the Coach, who then dramatically wheels himself over to meet the Average Team.

65. In both works, after the Coach is introduced to the team, the scene cuts immediately to a montage in which the Coach puts the Average Team through a sadistic and intentionally unrealistic training routine. In the Authors’ Screenplay, the Coach has pit bulls chase the team, and he makes them jump between posts over a field of broken glass. In the Infringing Work, the Coach throws wrenches at their heads and makes them dodge traffic on a busy thoroughfare. In both works, the Coach pelts them with balls that are fired from a machine at close range.

66. In both works, part of the way through Act II the Main Character’s true love (“True Love”) becomes associated for the first time with the Average Team. In the Authors’

Screenplay, True Love is closely associated with the Coach. In the Infringing Work, True Love attends one of the Average Team's practices, dazzles them with her considerable dodgeball skills, and subsequently joins the team.

67. In both works, it is initially unclear whether True Love will be available for a romantic relationship with the Main Character. In the Authors' Screenplay, the Main Character does not know whether or not the Coach is romantically involved with True Love. In the Infringing Work, the African-American Guy expresses his view that True Love is a lesbian, and the Coach calls her a "dyke."

68. In both works, the Coach is at least partially responsible for the lack of clarity about whether True Love is available to the Main Character. In the Authors' Screenplay, the Main Character is about to ask True Love whether she is dating the Coach, and the Coach cuts him off in mid-sentence to perpetuate the uncertainty. In the Infringing Work, the Coach reiterates his view that True Love is a lesbian, and when the Main Character attempts to express his view that she is not a lesbian, the Coach cuts him off in mid-sentence. This uncertainty persists until very nearly the end of both works.

69. In both works (Act III in the Infringing Work), we also see that the Main Character enjoys playing recreational dodgeball with kids.

70. During Act II, we see the first signs that a romantic relationship may develop between two oddball characters. In both works, this relationship develops under circumstances in which most people would not feel romantic attraction. In the Authors' Screenplay, Wana falls for the easily startled African-American Guy because his nervous nature makes him adept at dodging balls. In the Infringing Work, the Romantic Loser falls for a truly hideous dodgeball player that the Antagonist hired to join his team.

71. In both works, a player does a bizarre roll on the ground for no apparent reason; it is a strange non sequitur. In the Authors' Screenplay, Wana does such a roll. In the Infringing Work, the Antagonist (in Act III) does such a roll.

72. In both works, through considerable hard work, the Average Team improves substantially and becomes a team of quality dodgeball players.

73. In both works,<sup>1</sup> the Coach tells the Main Character that he is a natural leader with the talent and the gift necessary to pull the Average Team through.

74. In both works,\* the Main Character is given an item with seemingly mystical powers that had belonged to the Coach.

75. In both works,\* after the Average Team improves, the Coach gives them a stern lecture about how far they have to go.

76. In both works,\* before the Average Team meets its goals, the Coach dies in a bizarre and unexpected accident.

77. In both works,\* immediately following the bizarre accident, the scene immediately shifts to one in which the Average Team and True Love are mourning the Coach's death.

78. In both works, the final scene before the Tournament begins involves only the Main Character and True Love, and they resolve to go to the Tournament and win.

79. During Act II up to commencement of the Tournament, additional questions are raised:

- Will the Main Character win the heart of his True Love? Is her heart available for the winning?

---

<sup>1</sup>

Several scenes involving the Coach that occur before the Tournament in the Author's Screenplay, occur during the Tournament in the Infringing Work. These scenes are denoted with an "\*".



- Having now been trained by the Coach, can the Average Team succeed without him?\*
- Will the Out-Of-Shape Loser overcome a difficult character flaw to help the Average Team?
- Will an unlikely romance develop between two decidedly oddball characters?

### **The Dodgeball Tournament**

80. In both works, the events described in paragraphs 81 to 126 occur during the Tournament.

81. In the Author's Screenplay, the entirety of Act III consists of the Tournament and events arising out of the Tournament. In the Infringing Work, the Tournament begins toward the end of Act II and continues through the entirety of Act III.

82. In both works, the Opening Sequence of the Tournament sets the stage for the whole Tournament. The Opening Sequence of the Tournament begins with a brief scene containing visual images and dialogue that clearly establish the location of the Tournament. In the Authors' Screenplay, it is Chicago. In the Infringing Work, it is Las Vegas.

83. In both works, the Opening Sequence of the Tournament continues with the first appearance of two ESPN-like announcers. The Tournament is being televised, and the announcers provide comic relief as they give sportscaster-like commentary throughout the Tournament.

84. In both works, we see during the Opening Sequence of the Tournament that dodgeball is a far more popular spectator sport in these fictional works than it is in reality. People have traveled great distances to either view or participate in the Tournament; hundreds of spectators attend the Tournament; and dodgeball has enough of a following to support its being broadcast on television.

85. In both works, the Tournament provides a forum for male-genitalia humor. In the Authors' Screenplay, the Average Team is named after the now-deceased Coach, whose last name was Maiwang. This sets the stage for the announcers' many "my wang" comments. In the Infringing Work, the announcers (and others) make a variety of "balls" references.

86. In both works, shortly after the first appearance of the announcers, we see the teams that are competing, most of which, once again, consist of amusing and unusual assortments of characters. We also see that there are cheerleaders in attendance, providing the second opportunity for scenes involving scantily clad, sexy women.

87. In both works, early in the Tournament, the Lovelorn Guy runs into the Attractive Cheerleader and the Mean Guy. As usual the Mean Guy acts like a jerk, but the Attractive Cheerleader shows some interest in the Lovelorn Guy. The conversation does not go far, however, because the Mean Guy walks off, screams for the Attractive Cheerleader to follow him, and she does so.

88. In both works, the Antagonist taunts the Main Character and his team at various points in the Tournament, including a scene in which he gives the Main Character nasty looks from a distance.

89. In both works, both the Average Team and the Antagonist's Team advance through the early rounds. Each round contains action-packed games in which both teams defeat their amusing foes. In the Authors' Screenplay, there are teams such as "Gone Postal," which consists of large, angry postal workers; Team Shiva, spiritual white boys with dreadlocks; and the Metermaids, stereotypical "butch" lesbians. In the Infringing Work, the teams include Lumberjacks, Germans who worship David Hasselhoff, and young, urban hip-hoppers.

90. In the semi-finals of both works, the Out-Of-Shape Loser proves that he is not such a loser after all by overcoming his character flaw to help the Average Team win. In the Authors' Screenplay, the Out-Of-Shape Loser (Gordo) overcomes certain bathroom-related issues in order to make it to the game, then save the day by letting all six balls deflect off him, so that they can be caught by his teammates. In the Infringing Work, the Out-Of-Shape Loser (Gordon) overcomes his seeming inability to get angry by going into a rage when he sees his wife with another man, then single-handedly defeating several opposing players.

91. In both works, the Average Team calls its only timeout in the semi-finals at a point in time in which it appears that they are in trouble.

92. In both works, there is a scene in which the Out-Of-Shape Loser charges forward to throw a ball with a crazed scream of "AHH!!"

93. In both works, there is at least one scene in which opposing teams charge at each other with crazed screams of "AHHH!!"

94. In both works, after the semi-finals are completed, there is a one-day break before the finals (the "Big Game").

95. In both works, many things happen the night before the Big Game. For one thing, the Antagonist devises a nefarious plan to stop the Average Team from winning and prevent a member of the Average Team from making it to the Big Game.

96. In both works, as the rest of the team leaves a bar the night before the Big Game, the Romantic Loser notices and approaches a woman who is sitting alone at the bar. The Romantic Loser finally becomes romantically involved with a woman. In each case, the night before the Big Game, the Romantic Loser becomes involved with a woman hired by the Antagonist. In the Authors' Screenplay, the Romantic Loser sleeps with the hired woman. In the

Infringing Work, the Romantic Loser gets together with – and it is implied that he sleeps with – the hired woman.

97. In both works, the Main Character is about to give up because, despite the Average Team's success, the Antagonist's Team is heavily favored to win in the finals, and the Main Character believes his team will lose.

98. In both works, True Love is disappointed with, and concerned about, the Main Character because he appears to be giving up at the last minute after making it so far.

99. In both works, the day of the Big Game begins with an outdoor scene showing that it is early morning and that the game will take place later on.

100. In both works, the Main Character is on the verge of giving up on the day of the Big Game when an unexpected person appears out of nowhere and convinces him to go to the Big Game and do his best. In the Authors' Screenplay, the ghost of the Coach (the "Ghost") convinces the Main Character to go back and try to win the Tournament. In the Infringing Work, Lance Armstrong convinces the Main Character to return to the Tournament.

101. In both works, the Main Character receives advice from the Ghost when the dodgeball going gets tough. In the Authors' Screenplay, the Ghost convinces the Main Character to return to the Tournament. In the Infringing Work, the Ghost provides advice during the Big Game, appearing as a spirit in a scarf that he had given to the Main Character.

102. In both works, at the beginning of the Big Game, the Average Team appears to be in trouble because not everybody is on time and there are a number of other problems. In the Authors' Screenplay, the Romantic Loser barely makes it because he was with the woman hired by the Antagonist; the Bizarre Outcast is hung over; and the Out-Of-Shape Loser has digestive issues related to the prior night's Mexican food. In the Infringing Work, the Main Character has

decided to quit; the Lovelorn Guy has gone to compete in a cheerleading competition; and the Bizarre Outcast disappears after the Main Character bluntly tells him that he is not really a pirate.

103. Before the Big Game begins in both works, it is clear that the Antagonist's Team is impressive and highly favored to win.

104. In both works, a number of identical scenes take place on the dodgeball court, during the Tournament and including the Big Game.

105. In both works, as the dodgeball games progress, the scenes become progressively more over-the-top and unrealistic.

106. In both works, a player is struck so hard with a dodgeball that his head snaps back dramatically and he falls hard onto the court, a result that would not likely occur in reality from being struck with a dodgeball.

107. In both works, a player is struck so hard with a dodgeball that he goes flying many feet through the air, a result that would not occur in reality from being struck with a dodgeball.

108. In both works, the Main Character gives a speech to pump up the Average Team before the Big Game.

109. In both works, the teams line up across from one another and a referee stands at mid-court and gives directions about how the game is to be played.

110. In both works, the players are on the court in connection with the Big Game when a player on the Average Team shows up late. The Antagonist says that the player is too late, but, ultimately, he is permitted to play.

111. In both works, a player on the Average Team is eliminated from the Big Game because he is struck with a dodgeball after being distracted by the sight in the stands of a woman to whom he is attracted.

112. In both works, a player toward the end of the Big Game dives to save a teammate from being eliminated with a melodramatic scream of “NOOOO!!”

113. In both works, the Average Team comes to dislike the Antagonist even more because he injures a member of the Average Team and is highly unsportsmanlike.

114. In both works, after the Antagonist’s unsportsmanlike behavior, the only woman on the team implores the team to “kick” the Antagonist’s “ass.”

115. In both works, the Big Game is dramatic and goes right down to the wire.

116. In both works, the Average Team wins in a dramatic finale sequence, in which the Main Character saves the day through a dodgeball feat that could only be accomplished with supernatural assistance.

117. In both works, the Antagonist is defeated, the Antagonist’s Team is defeated, and the Average Team is victorious.

118. In both works, the Antagonist is a poor sport after he is defeated.

119. In both works, the prize money is won so the company will not go out of business.

120. In both works, the Bizarre Outcast finds acceptance with his average peers.

121. In both works, the Attractive Cheerleader leaves the Mean Guy and falls for the Lovelorn Guy.

122. In both works, a total of three romantic relationships come to fruition by the end of Act III.

123. In both works, there is a weird romantic scene between the oddball characters who first showed signs of attraction during Act II. In the Authors’ Screenplay, Wana and the African-American Guy make out like “blind woodpeckers.” In the Infringing Work, the hideous woman hired by the Antagonist lies with the Romantic Loser licking his face like a lollipop.

124. In both works, following the final dodgeball victory, the Main Character finally kisses True Love after the ambiguity about her availability is finally resolved.

125. In both works, the Main Character realizes the importance of winning for his team of average folks.

126. Thus, all of the questions posed in both works have now been answered in the exact same way:

- The Average Team raises enough money to save the company from going out of business.
- The Average Team succeeds, even after losing its Coach.
- The Main Character defeats the Antagonist.
- The Out-Of-Shape Loser overcomes a character flaw and proves – by excelling on the dodgeball court – that he is not such a loser after all.
- The Romantic Loser becomes romantically involved with a woman.
- The Lovelorn Guy wins the heart of the Attractive Cheerleader.
- The Bizarre Outcast finds acceptance among the average.
- A romance develops between two oddball characters.
- The Main Character finds happiness with his True Love.
- Above all, a ragtag bunch of average guys, because they stuck together as a team, perseveres and succeeds in a game that has been historically used as a means to degrade and demean them.

**Similarities Between The Authors' Screenplay  
And Drafts Of The Infringing Work**

127. In addition to the dozens of similarities between the Authors' Screenplay and the Infringing Work, there are many additional similarities between the Authors' Screenplay and drafts of the Infringing Work. The drafts provide further evidence that Mr. Thurber actually

copied the Authors' Screenplay. Similarities between the Authors' Screenplay and drafts of the Infringing Work are set forth below in paragraphs 133 to 151.

128. In both works, the Opening Sequence of Act I includes a scene in which young nerdy children on a school playground are besieged by dodgeball bullies.

129. In both works, there is a flashback during Act I in which the Main Character recalls his youthful dodgeball experiences.

130. In both works, there is a scene in which young, dodgeball-playing children hit the Main Character in the testicles.

131. In both works, a dodgeball game or a dodgeball-related event takes place at night outside a drinking establishment. In the Authors' Screenplay, the Main Character learns that the Bizarre Outcast is adept at dodging balls when he sees him avoid bottles that are being thrown at him by angry lesbians. In a draft of the Infringing Work, a makeshift dodgeball court is set up outside a bar for an impromptu dodgeball battle between the Average Team and the Antagonist's Team.

132. In both works, the Coach watches the Average Team play dodgeball from the sidelines before he is introduced to them. In both works, the Coach's presence is mysterious because we do not yet know who he is, why he is watching, or what his subsequent role will be.

133. In both works, we learn not only that dodgeball has been played in China for generations, but also that it is important for dodgeball players today to learn the dodgeball techniques that the Chinese have used.

134. In both works, the Main Character uses the methods of the Chinese to help him succeed in competitive dodgeball.



135. In both works, a member of the Antagonist's Team catches a dodgeball and then crushes it in his hands like a grape for intimidation purposes.

136. In both works, we learn that the Antagonist has had a prior relationship with one supporting character – the African-American Guy – and that the Antagonist treated the African-American Guy poorly.

137. In both works, two supporting characters from the Average Team have a running dialogue throughout the works on issues and disagreements that are not critical to the plot.

138. In both works, a dodgeball player tosses a ball high into the air as a means of getting a player on the opposing team out.

139. In both works, an unsavory character licks a dodgeball in a disgusting fashion.

140. In both works, a member of the Antagonist's Team hits another player with such force that his body gets stuck, contorted into an unusual position.

141. In both works, the defending champions in the Tournament are unsavory characters. In the Authors' Screenplay, the defending champion is "Gone Postal," a team of large angry postal workers. In a draft of the Infringing Work, the defending champions are a team of convicts on weekend furlough.

142. In both works, when the Out-Of-Shape Loser saves the day in the semi-finals, he does so by getting five players out at once in a manner that is not humanly possible. In the Authors' Screenplay, he allows six balls to deflect off of his obese frame, and five of them are caught by his teammates. In a draft of the Infringing Work, the Out-Of-Shape Loser catches five balls at once in various angles of his body.

143. In both works, when the Romantic Loser approaches at a bar a woman hired by the Antagonist, the woman responds by talking about the Romantic Loser's penis and they

immediately leave to have sex. In the Authors' Screenplay, the Romantic Loser asks the woman if she likes "Maiwang," the Average Team's name, and she responds, "I love your wang. [kiss] Let's get out of here." The Romantic Loser says "Yuuuupp!" and they leave and have sex. In a draft of the Infringing Work, the Romantic Loser initiates a conversation, and the woman responds, "You have the largest man-hose I have ever seen [Romantic Loser fumbles] I am in extreme state of arousal. Please to make intercourse with my face." The Romantic Loser says "Check please" and they leave and have sex.

144. In both works, True Love gets angry at the Main Character and speaks to him harshly because he is about to give up at the very last minute.

145. In both works, the Main Character gives a short speech toward the very end in which he emphasizes the importance of his friends.

**CLAIM FOR RELIEF**  
**(Copyright Infringement)**

146. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 145 above as if fully set forth herein.

147. *Dodgeball: The Movie* is an original work of authorship and copyrightable subject matter under the laws of the United States.

148. Plaintiffs are the owners of all copyright rights in and to *Dodgeball: The Movie*, and have never assigned, licensed or otherwise transferred their copyright rights to any third party.

149. In June 2004, the Infringing Work was released for theatrical exhibition in the United States and Canada, including in New York. The Infringing Work was a hit, generating more than \$114 million dollars in gross domestic box office revenues. Thereafter, the Infringing

Work was distributed: (a) for exhibition in international markets, (b) in various home media formats, (c) for exhibition on pay-per-view and other pay television services, and (d) for exhibition on free television and basic cable programming services.

150. There is substantial similarity between the Infringing Work and protectible portions of *Dodgeball: The Movie*. Upon information and belief, the defendant has earned revenues from producing and/or otherwise exploiting the Infringing Work.

151. The defendant's conduct as alleged above was never authorized, licensed, permitted or ratified by plaintiffs or their agents.

152. By reason of the foregoing, defendant has infringed plaintiffs' copyright in *Dodgeball: The Movie* in violation of the Copyright Act.

#### **DEMAND FOR RELIEF**

**WHEREFORE**, plaintiffs demands the following relief:

(a) Under 17 U.S.C. § 504, an award of actual damages and disgorgement of any and all profits attributable to infringement of *Dodgeball: The Movie* that Mediastream may have received;

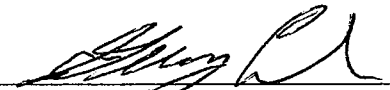
(b) An order requiring Mediastream to pay to plaintiffs the percentage of any and all future profits from *Dodgeball: A True Underdog Story* that a jury determines is attributable to infringement of *Dodgeball: The Movie*;

(c) An award of attorneys' fees, interest and costs under the Copyright Act; and

(d) Such other and further relief as the Court deems just and proper.

Dated: New York, New York  
June 13, 2007

DAVIS & GILBERT LLP

By: 

Guy R. Cohen (GC 2353)  
Shirin Keen (SK 6793)  
1740 Broadway  
New York, New York 10019  
(212) 468-4800

Attorneys for Plaintiffs  
David Price and Ernando Ashoka Thomas